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No. 88-138

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

CHARLES S. LIBERIS, DAVID L. FLEMING
and CHARLES S. LIBERIS, P.A.,
Petitioners,

v.

D. BROWARD CRAIG, TRUSTEE IN BANKRUPTCY
for DAVID A. CRABTREE,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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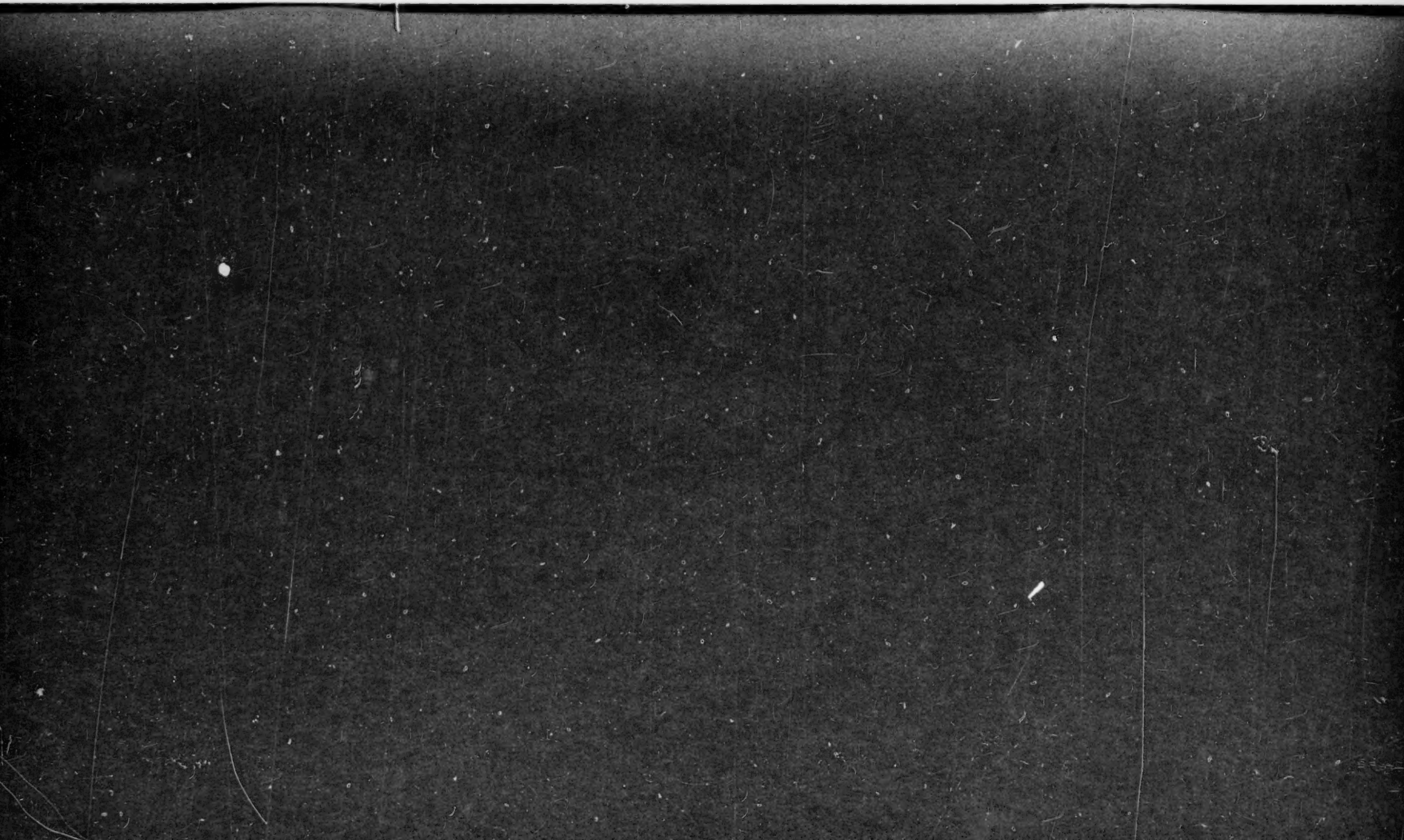
BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly held that the Bankruptcy Court and District Court did not abuse their discretion in awarding to a bankruptcy trustee attorneys' fees and expenses incurred in responding to petitioners' unsuccessful appeal of civil contempt sanctions.

2. Whether the Court of Appeals correctly held that the Bankruptcy Court judge was not required to recuse himself from ruling on the request for attorneys' fees simply because he made the initial contempt finding and where there was no showing of bias or prejudice.

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BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Respondent D. Broward Craig, Trustee of the bankruptcy estate of David A. Crabtree, respectfully submits this brief in opposition to the petition for writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit in *Liberis v. Craig*, No. 87-5321 slip op. (6th Cir. April 25, 1988). The opinions of the lower courts are attached as appendices A, B, and C to the petition for writ of certiorari.

STATEMENT OF THE CASE

The petition for a writ of certiorari filed by Charles S. Liberis, David L. Fleming and Charles S. Liberis, P.A. (the "Petitioners") stems from Petitioners' intentional disobedience of an order of the United States Bankruptcy Court for the Eastern District of Tennessee, for which they were judged in civil contempt. Petitioners seek review of the judgment of the United States Court of Appeals for the Sixth Circuit, filed on April 25, 1988, affirming the award of attorneys' fees and expenses to Respondent D. Broward Craig, Trustee of the bankruptcy estate of David A. Crabtree ("Craig"). The fees and expenses were incurred in obtaining the contempt order and defending it on appeal. Petitioners also seek review of the Court of Appeals' judgment upholding the decision by Bankruptcy Judge Bare not to recuse himself from ruling on the award of the fees.

Petitioners are attorneys in Florida who, in 1984, represented a company called Florida Investment and Leasing Company, Inc. ("FILCO"). The contempt proceedings arose from Petitioners' attempt to obtain a $1.7 million fund from Craig and the trustee of the C.H. Butcher, Jr. bankruptcy estate (collectively the "Trustees"). The fund in question was transferred to the Trustees pursuant to a judgment entered by the Bankruptcy Court on February 10, 1984. On February 13, 1984, Petitioners filed a bankruptcy petition in the United States Bankruptcy Court for the Northern District of Florida (the "Florida Bankruptcy Court") on behalf of FILCO. Petitioners also filed on FILCO's behalf a complaint against the Trustees in the Florida Bankruptcy Court, claiming title to the fund.

On February 22, 1984, Petitioners filed a motion in the Tennessee Bankruptcy Court requesting *ex parte* relief from the automatic stay to permit the suit against the Trustees to proceed in Florida. That same day, Judge Bare of the Bankruptcy Court denied the motion at a

hearing attended by FLICO's Tennessee counsel. Hours after learning that the Tennessee Bankruptcy Court had denied the request for relief from the stay, Petitioners appeared before the Florida Bankruptcy Court seeking the same relief. Petitioners made this motion without any notice to the Trustees. The Florida Bankruptcy Court granted the requested relief and issued a temporary restraining order prohibiting the Trustees and their attorneys from disbursing the $1.7 million.

On March 5, 1984, upon the joint motion of the Trustees, Judge Bare found Petitioners in contempt for engaging in "unlawful, illegal, deliberate and intentional violations" of the February 22 order denying relief from the stay and of the automatic stay itself.[1] The contempt order issued by the Bankruptcy Court also provided that Petitioners would pay all costs and expenses, including attorneys' fees, incurred by the Trustees in response to Petitioners' actions taken after February 22, 1984.[2]

Petitioners appealed the contempt order to the United States District Court for the Eastern District of Tennessee. The District Court conducted a *de novo* review of the record and found no material facts to be in dispute. The District Court held:

> Appellants [i.e. Petitioners] clearly violated an order of the Tennessee Bankruptcy Court, which denied the motions for relief from the stay. Purposefully to avoid this order, Appellants sought collateral relief from the Florida Bankruptcy Court. The proper course would have been for Appellants to file in the Tennessee Bankruptcy Court a motion for reconsideration or to appeal the Court's order.[3]

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[1] *In re Crabtree*, No. 3-83-01116, Order Memorandum No. 61 at 5 (Bankr. E.D. Tenn. Mar. 5, 1984).

[2] *Id.* at 6.

[3] *Liberis v. Craig*, Civ. 3-84-381, Memorandum at 4-5 (E.D. Tenn. August 9, 1984).

Petitioners then appealed the order of the District Court to the Sixth Circuit Court of Appeals. On June 7, 1985, the Court of Appeals, in a per curiam opinion, affirmed the ruling of the District Court, stating:

> Appellants suggest that they legitimately and reasonably felt that the court in Florida could provide them with the same relief denied by the court in Tennessee because federal bankruptcy courts are individual courts and not part of a national system. We disagree. It is elementary that federal courts are part of a federal system and not individual entities free to ignore the rulings by other federal courts. Appellants, attorneys at law, know or should have known this as a matter of course. Given their positions as attorneys, Appellants can offer no justification for their actions.[4]

Petitioners' subsequent motion for a rehearing was denied.

On August 16, 1985, Craig moved in the Tennessee Bankruptcy Court for assessment of costs and attorneys' fees against Petitioners. On September 5, 1985, Petitioners filed a motion and affidavit with the Bankruptcy Court requesting Judge Bare to recuse himself. Petitioners alleged that Judge Bare had a personal bias against them. The Bankruptcy Court denied the motion on November 1, 1985. Subsequently, on March 26, 1986, after an evidentiary hearing, the Bankruptcy Court awarded Craig expenses and fees of $36,984.69. This award included the fees incurred by Craig in defending the contempt order on appeal in the District Court and in the Sixth Circuit.[5]

Petitioners then appealed to the District Court the orders denying recusal and awarding fees. On February

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[4] *Liberis v. Craig*, No. 84-5842, slip op. at 6 (6th Cir. June 7, 1985).

[5] Memorandum Opinion of the Bankruptcy Court (Mar. 26, 1986), reprinted in the Petition for Writ of Certiorari, Appendix A.

3, 1987, the District Court, again upon a *de novo* review of the record, affirmed both of the orders of the Bankruptcy Court.[6]

Petitioners then appealed the District Court's February 3, 1987 order to the Sixth Circuit, which affirmed.[7] The Court of Appeals, applying the "abuse of discretion" standard, held that the Bankruptcy Court was entitled to award attorneys' fees not only for the initial contempt motion, but also for defending Petitioners' subsequent appeals of the contempt order. The court stated that under a "well recognized exception" to the American Rule, courts have "inherent authority to enforce their judicial orders and decrees in cases of civil contempt by assessing attorneys' fees."[8] Citing numerous cases, the court went on to hold that attorneys' fees incurred on appeal may be appropriately awarded, since Craig's "appellate expenses stemmed directly from plaintiff's intentional disregard of the initial order of the bankruptcy court."[9]

The Court of Appeals also ruled that Judge Bare was not required to recuse himself. The court found that Petitioners' affidavit in support of their recusal motion was "speculative"; and that Petitioners' actions were not "insulting" or personally directed at Judge Bare. The court also observed that the district court had conducted a *de novo* review of both the contempt order and the award of attorneys' fees, without provoking additional charges of bias from Petitioners.[10]

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[6] *Liberis v. Craig*, No. 3-86-332 (E.D. Tenn. Feb. 3, 1987). *See* Petition, Appendix B.

[7] *Liberis v. Craig*, No. 87-5321 slip op. (6th Cir. April 25, 1988). *See* Petition, Appendix C.

[8] *Id.* p. 9c.

[9] *Id.* p. 11c.

[10] *Id.* p. 8c.

Petitioners then filed the Petition for Writ of Certiorari, seeking review of the Sixth Circuit's opinion of April 25, 1988.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

This Court will grant review on writ of certiorari, in its discretion, "only when there are special and important reasons" for review. S.Ct. R. 17.1. The Petitioners claim that review should be granted on the attorneys' fees issue because the Sixth Circuit's decision conflicts with decisions of this Court and with "federal law." They further claim that the Sixth Circuit's decision on the recusal issue should be reviewed because it conflicts with 28 U.S.C. § 455.[11]

Neither of the Petitioners' claims has merit. The decision of the Court of Appeals fully comports with the decisions of this Court and the applicable statutes. Moreover, it is supported by the decisions in every other federal court of appeals to have addressed the issues. Because the Petitioners have failed to establish a reasoned basis for this Court to review this case, their petition for certiorari should be denied.

I. THE COURT OF APPEALS CORRECTLY HELD THAT THE AWARD BY THE BANKRUPTCY AND DISTRICT COURTS OF FEES AND EXPENSES INCURRED ON PETITIONERS' UNSUCCESSFUL APPEALS WAS A PROPER EXERCISE OF DISCRETION

Petitioners have mounted a very narrow attack on the Sixth Circuit's affirmance of the award of attorneys' fees.

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[11] Petition, p. 5. Under Supreme Court Rule 17.1(a), review may also be granted to resolve a conflict among the circuits. Petitioners understandably do not attempt to rely on this consideration. The circuits are in full agreement with the result reached by the Sixth Circuit below.

They concede, as they must, that the trial court had the inherent judicial power to award attorneys' fees incurred by Craig in obtaining the contempt order.[12] This power constitutes a long recognized exception to the "American Rule" that attorneys' fees are not recoverable by the prevailing litigant in a federal civil action in the absence of statutory authority. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 258-259 (1975). There is also no dispute that the determination as to the amount of fees to award against Petitioners for their intentional violation of the Bankruptcy Court's order was wholly in the discretion of the Bankruptcy Court and the District Court. *See United States v. Asay*, 614 F.2d 655, 660 (9th Cir. 1980); *Cook v. Ochsner Found. Hosp.*, 559 F.2d 270, 272 (5th Cir. 1977). The decision to award fees and the amount of fees to be awarded are reviewed only for an abuse of discretion. *Perry v. O'Donnell*, 759 F.2d 702, 704 (9th Cir. 1985).

Petitioners' sole claim is that the Bankruptcy Court and District Court abused their discretion in awarding Craig his attorneys' fees and expenses in defending against Petitioners' unsuccessful appeals of the contempt order. Petitioners' claim is unsupported by any authority whatsoever and, as discussed in the Court of Appeals' opinion, there is extensive authority to the contrary.

Petitioners' contention that the decision below conflicts with this Court's holding in *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980), is manifestly incorrect. Even were Petitioners correct that *Roadway* requires a finding of bad faith, Judge Bare's contempt order met the standard. He found that Petitioners had engaged in "unlawful, illegal, deliberate and intentional violations" of his February 22, 1984 order. In fact, however, Petitioners have misstated the holding of *Roadway*. *Roadway* involved the "bad faith" exception to the American Rule,

[12] Petition, p. 6.

which the Court recognized as totally separate from the exception ivolved here—the "willful disobedience of a court order." *Id.* at 766.[13] The Court in *Roadway* made it abundantly clear that a specific finding of bad faith is only required in cases involving the "bad faith" exception. *Id.* at 767.

Petitioners' next assertion, that the Court of Appeals' affirmance of the award of attorneys' fees incurred on appeal is somehow in conflict with *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975), is equally without merit. Far from being in conflict, the opinion below relied on *Alyeska* and is fully consistent with that decision.

The Court in *Alyeska* explicitly recognized the "inherent power in the courts" to assess attorneys' fees for the "willful disobedience of a court order . . . as part of the fine to be levied on the defendant . . . ." 421 U.S. at 258. Nothing in *Alyeska* even suggests, much less states, that this power is restricted to the granting of attorneys' fees incurred only in the court that issued the order.

Indeed, at the time *Alyeska* was decided, the inherent judicial authority of the courts to award fees and expenses incurred on appeal of a contempt order was well established. *See, e.g., Schauffler v. United Ass'n of Journeymen & Apprentices*, 246 F.2d 867, 870 (3d Cir. 1957); *Crane v. Gas Screw Happy Pappy*, 367 F.2d 771, 775 (7th Cir. 1966), *cert. denied sub nom. Borrowdale v. Reuland*, 386 U.S. 959 (1967). In the very case cited in *Alyeska* for the proposition that a court may assess attorneys' fees for the willful disobedience of a court order,[14] this Court upheld the award of attorneys' fees

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[13] The Court quoted from the Court's opinion in *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 258 (1975), in which the Court discussed each exception separately.

[14] *Alyeska*, 421 U.S. at 258.

incurred in a court other than the court issuing the order that was violated. *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399, 426-428 (1923). Finally, the restriction that Petitioners profess to divine in *Alyeska* would be inconsistent with the concededly broad discretion of trial courts to determine the propriety and amount of attorneys' fees. In short, *Alyeska* is in conflict with Petitioners' position—not with the result reached by the Court of Appeals, the District Court, and the Bankruptcy Court.[15]

Petitioners concede that Craig's attorneys' fees and expenses "arose as a direct result" of their contumacious actions and subsequent appeals. Nevertheless, they contend that expenses incurred on appeal of a contempt order are indistinguishable "from expenses which might arise under the appeal of any other court decision." Petition, p. 7. The spuriousness of this argument is demonstrated by the numerous cases cited in the Court of Appeals opinion which hold that a court may award attorneys' fees incurred on appeal. The key to all of these decisions is the discretionary authority of the court to award the costs *necessarily* resulting from the violation of the trial court's order. The identity of the court in which these costs are incurred is irrelevant.

In *Schauffler v. United Ass'n of Journeymen & Apprentices*, 246 F.2d 867 (3d Cir. 1957), a local union and two union officers were held in contempt for violation of an injunction against work stoppages. The United States

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[15] Petitioners argue that because Rule 38 of the Federal Rules of Appellate Procedure provides for fee awards in the case of frivolous appeals, and because there was no finding by the Court of Appeals that Petitioners, appeal was frivolous, Craig is not entitled to attorneys' fees incurred on appeal. Petition, pp. 7-8. Petitioners' argument is an obvious *non sequitur*. The fact that the Court of Appeals may award attorneys' fees under Fed. R. App. P. 38 does not mean that the trial court is precluded from awarding such fees under its inherent authority.

Court of Appeals for the Third Circuit held that the district court could allow litigation expenses for the prosecution of the contempt cases both in the district court and on appeal. The court stated:

> The determination of assessable items of cost in civil contempt is within the discretion of the court whose dignity has been offended, and it is not an abuse of that discretion to impose as a penalty the expenses incurred in defending the propriety of the original imposition in an appeal court.
>
> . . . Because it was the order of the district court which was violated, that court may assess costs of litigation in the contempt proceedings regardless of the court in which the expenses were incurred.

Id. at 870, citing *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399, 428 (1923).

Petitioners attempt to distinguish *Schauffler* by asserting that it improperly relied on *Toledo Scale.*[16] Petition, p. 9. Petitioners miss the point. *Toledo Scale* approved the award by one court of attorneys' fees incurred defending a collateral attack of the court's judgment in another court. The *Schauffler* court cited *Toledo Scale* for the proposition that courts have wide discretion to award attorneys' fees as a sanction for contempt—*includ-*

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[16] Petitioners also argue, without citing any authority, that *Schauffler* would have reached a different result had it been decided after *Alyeska.* Petition at 8. Petitioners' contention is illogical and unfounded. The fact that the Supreme Court did not specifically address the recoverability of attorneys' fees on appeal hardly leads to the conclusion that such fees would not be allowed. On the contrary, *Alyeska* recognizes statutory and judicial exceptions to the American Rule, one of which is that attorneys' fees may be recovered on appeal. Numerous cases decided after *Alyeska* have reached the same result as *Schauffler. See, e.g., Tamari v. Bache & Co. (Lebanon) S.A.L.*, 729 F.2d 469 (7th Cir. 1984); *Jacobs v. Martin Sweets Co.*, 550 F.2d 364 (6th Cir.), *cert. denied*, 431 U.S. 917 (1977); *Marks v. Prattco, Inc.*, 633 F.2d 1122 (5th Cir. 1981).

ing attorneys' fees incurred in another judicial forum.[17] The fact that *Toledo Scale* concerned fees incurred in another district court, while *Schauffler* happened to concern fees incurred on appeal, is irrelevant to the analysis.

Similarly, in *Crane v. Gas Screw Happy Pappy*, 367 F.2d 771 (7th Cir. 1966), *cert. denied sub nom. Borrowdale v. Reuland*, 386 U.S. 959 (1967), the appellant was held in civil contempt for refusing to comply with the district court's order that certain property be returned to the appellee. The United States Court of Appeals for the Seventh Circuit affirmed the district court's finding of contempt, and assessed against the appellant the costs of the appeal:

> The flagrant and contumacious character of the appellant's defiance of the court's orders makes it appropriate that appellee be reimbursed for items of expenses necessarily incurred on appeal to this Court in defending the adjudication of the District Court.

367 F.2d at 775.

Schauffler and *Crane* are indistinguishable from the present case and were properly relied upon by the Court of Appeals in its opinion below. The Court of Appeals also discussed with approval *Tamari v. Bache & Co. (Lebanon) S.A.L.*, 729 F.2d 469 (7th Cir. 1984). In that case, the court awarded appellate fees and expenses incurred in defending the district court's imposition of sanctions against plaintiffs' counsel under Fed. R. Civ. P. 37(b). *Id.* at 745. Although *Tamari*, like numerous other recent cases,[18] relied on a statutory exception to

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[17] The Court stated in *Toledo Scale*, 261 U.S. at 428:

> "The degree of punishment for contempt in such case is in the discretion of the court whose dignity has been offended and whose process has been obstructed."

[18] *See, e.g., Jacobs v. Martin Sweets Co.*, 550 F.2d 364 (6th Cir.), *cert. denied*, 431 U.S. 917 (1977); *Bugg v. International Union of*

the American Rule to award attorneys' fees on appeal, the court below ruled that there is "no principled basis for distinguishing between common law and statutory exceptions to the American Rule." [19] The Petitioners concede that this is so.[20] Thus, the entire body of case law addressing the award of attorneys' fees on appeal stands against their position.

The Court of Appeals' conclusion is supported not only by the case law, but also by important public policy considerations. An award of fees is often required to compensate fully the party proving the contempt. The imposition of attorneys' fees and expenses for the successful defense of a contempt order is fully consistent with this restorative purpose. These costs flow solely and directly from the contemnors' contumacious actions and their unsuccessful efforts to avoid the consequences of those actions. Failure to award appellate expenses substantially diminishes the value of the award made in the lower court, creating a disincentive for seeking sanctions and frustrating the very purpose of the award. *See Tamari*, 729 F.2d at 475; *Mickwee v. Hsu*, 753 F.2d 770 (9th Cir. 1985).

Petitioners pursued two unsuccessful appeals after the Bankruptcy Court held them in contempt. Craig brought their contumacious conduct to the attention of the Bankruptcy Court and twice defended the court order. The Court of Appeals' conclusion that Petitioners should bear the costs of their meritless appeals is wholly consistent with the decisions of the courts and with the purpose of civil contempt sanctions.

Allied Indus. Workers, 674 F.2d 595 (7th Cir.), *cert. denied* and *appeal dismissed*, 459 U.S. 805 (1982); *Marks v. Prattco, Inc.*, 633 F.2d 1122 (5th Cir. 1981).

[19] Appendix C, p. 11C.

[20] Petition, p. 10.

II. THE COURT OF APPEALS CORRECTLY HELD THAT JUDGE BARE WAS NOT REQUIRED TO RECUSE HIMSELF

Petitioners also contend that Bankruptcy Judge Bare should have recused himself from ruling on Craig's motion for attorneys' fees. The Court of Appeals' rejection of this argument was amply supported by the applicable law and by its review of the record before it.

The court below concluded that, under 28 U.S.C. § 144,[21] an affidavit alleging bias in support of a motion for recusal must be "sufficient." Mere assertions of a conclusionary nature, according to the court, do not meet this standard. Petitioners do not dispute the "sufficiency" requirement. Citing numerous cases,[22] the court went on to hold that judicial disqualification under Section 144 and 28 U.S.C. § 455 must be predicated upon extrajudicial conduct rather than upon judicial conduct.[23] Although Petitioners (citing no authority) challenge this

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[21] 28 U.S.C. § 144 provides, in pertinent part:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

[22] *Demjanjuk v. Petrovsky*, 776 F.2d 571, 577 (6th Cir. 1985), *cert. denied*, 475 U.S. 1016 (1986); *United States v. Story*, 716 F.2d 1088, 1091 (6th Cir. 1983); *Cleveland v. Krupansky*, 619 F.2d 576, 578 (6th Cir.), *cert. denied*, 449 U.S. 834 (1980).

[23] 28 U.S.C. § 455 provides, in pertinent part:

> (a) Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances: (1) where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; . . .

conclusion, their challenge is confined to the assertion that the language of Section 455 does not contain the qualification of extrajudicial conduct. Petitioners are apparently of the view that courts have no business interpreting the meaning of statutes. The reason for the qualification, of course, is that a judge's impartiality may reasonably be doubted only when the litigant's conduct crosses the line from normal judicial process to the personal realm.[24]

Applying these standards to the record before it, the Court of Appeals concluded that Petitioners had not come forward with a single fact which would lead a reasonable person to doubt the imparitality of Judge Bare. The affidavit in question consisted solely of speculation, and failed to allege one extrajudicial incident giving the appearance of bias or warranting recusal. Moreover, the court found that Petitioners' actions were not insulting or personally directed at Judge Bare. A judge can be disqualified on these grounds, as the court observed, only when the contumacious actions sink to the level of "personal vilification and scurrilous attacks."[25] Given the circumstances, Judge Bare's decision not to recuse himself—and the Court of Appeals' endorsement of that decision—was unquestionably proper.[26]

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[24] Thus, as the Court of Appeals stated (Appendix C, p. 7C): "The judge's impression of perceptions based upon information gained during the trial cannot be the basis of an allegation of bias." *See In re M. Ibrahim Khan, P.S.C.*, 751 F.2d 162, 164 (6th Cir. 1984); *United States v. Porter*, 701 F.2d 1158, 1166 (6th Cir.), *cert. denied*, 464 U.S. 1007 (1983); *In re Parr*, 13 B.R. 1010, 1018 (E.D.N.Y. 1981).

[25] Appendix C, p. 8C, *citing Farmer v. Strickland*, 652 F.2d 427, 438 (5th Cir. 1981), *cert. denied*, 455 U.S. 944 (1982).

[26] Petitioners assert that Judge Bare previously recused himself in a separate case involving the Petitioners. Petition, p. 12. It is impossible to discern from Petitioners' reference the reason for Judge Bare's recusal. In any event, Petitioners made the same

The Petitioners cite *Mayberry v. Pennsylvania*, 400 U.S. 455 (1974), for the proposition that due process demands that an "impartial judge" (i.e. other than the judge issuing the contempt order) define the punishment for contempt. Petition at 12. This is a total misapplication of the holding of *Mayberry*. *Mayberry* involved precisely the kind of "extrajudicial" incidents warranting recusal and not present here—personal attacks on the integrity of the judge.

Additionally, the Petitioners misinterpret *United States v. Meyer*, 462 F.2d 827 (3d Cir. 1972). *Meyer* discussed policies justifying summary contempt proceedings before a trial judge, *id.* at 831, rather than exceptions to the *Mayberry* standard. What bearing, if any, it has here is difficult to comprehend.

Finally, the Court of Appeals emphasized that the district court had conducted a *de novo* review of both Judge Bare's contempt order and his order assessing attorneys' fees.[27] This *de novo* review eliminates any possible argument favoring recusal. There has been no argument from Petitioners, as the Court of Appeals pointedly observed,[28] that the District Court was biased against Petitioners as well.

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argument to the District Court, which conducted a *de novo* review and found "no facts alleged which would 'convince a reasonable man that a bias exists.'" Appendix B, p. 6B.

[27] Appendix C, p. 8C.

[28] *Id.*

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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